

JAMES P. KRAUZLIS, ESQ.
BADIAK & WILL, LLP
Attorneys for Plaintiff
106 3rd Street
Mineola, New York 11501
(516) 877-2225
Our Ref. : 07-T-003-JK, et al.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MODINE MANUFACTURING COMPANY.,

07 Civ. 7457 (HB)

Plaintiff,

- against -

**EXPEDITORS INT'L GMBH
ANSWER TO CROSS-CLAIM
OF DELTA AIR LINES, INC.**

EXPEDITORS INTERNATIONAL GmbH (STR) and
DELTA AIR LINES, INC.,

Defendants.

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Defendant, EXPEDITORS INTERNATIONAL GmbH, by their attorneys, Badiak, & Will, LLP, as and for their Answer to the Cross-Claims of Co-Defendant Delta Air Lines, Inc., alleges upon information and belief as follows:

1. Denies the allegations set forth in paragraph "20." of the Answer of Delta Air Lines, Inc., with Cross-claims.
2. Denies the allegations set forth in paragraph "21." of the Answer of Delta Air Lines, Inc., with Cross-claims.

FIRST AFFIRMATIVE DEFENSE

3. The Cross-claims alleged by Co-Defendant Delta Air Lines, Inc., fail to state causes of action for which relief can be granted against this Defendant.

SECOND AFFIRMATIVE DEFENSE

4. Defendant's liability, if any, is limited in accordance with the applicable contracts of carriage or other contracts, bill of lading, tariffs and/or applicable regulations, statutes or treaties.

THIRD AFFIRMATIVE DEFENSE

5. The alleged damage did not occur while the shipment was in the custody or control of this defendant.

FOURTH AFFIRMATIVE DEFENSE

6. If the shipment was lost or damaged as alleged in the underlying complaint, which is denied, any such loss or damage was caused in whole or in part by the negligence of the Plaintiff and/or the Co-Defendant, their respective agents and/or other parties over which this Defendant had no control and for whose negligence this defendant is not responsible, and without any negligence on the part of this answering Defendant contributing thereto.

WHEREFORE, Defendant EXPEDITORS INTERNATIONAL GmbH, demands judgment against the defendant Delta Air Lines dismissing the Cross-Claims and for judgment in favor of Expeditors International GmbH and against Co-Defendant Delta Air Lines, Inc., for

indemnification, together with interest and the costs and disbursements of this action and all other relief which this Court may find just and proper under the circumstances.

Dated: Mineola, New York

October 10, 2007

BADIAK & WILL, LLP
Attorneys for Plaintiff,
EXPEDITORS INTERNATIONAL
OF WASHINGTON, INC.

By: 

JAMES P. KRAUZLIS (JK-4972)

TO:

MOUND, COTTON, WOLLAN & GREENGRASS
Attorneys for Defendant
Delta Air Lines, Inc.
One Battery Park Plaza
New York, New York 10004
Attn: Francis A. Montbach, Esq.

HILL RIVKINS & HAYDEN LLP
Attorneys for Plaintiff
45 Broadway
New York, New York 10006
Attn: Thomas E. Willoughby, Esq.

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AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

I, **Kashirah Livingstone**, being duly sworn, deposes and says:

I am not a party to the within action, am over 18 years of age and reside c/o Badiak & Will, LLP, 106 Third Street, Mineola, New York 11501-4404. On October 31, 2007 I served the within **Expeditors International GmbH Answer to Cross-Claim of Delta Air Lines, Inc.** as follows:

Mound, Cotton, Wollan & Greengrass
One Battery Park Plaza
New York, New York 10004

Hill, Rivkins & Hayden, LLP
45 Broadway
New York, New York 10006

By depositing a true copy thereof enclosed in a post-paid wrapper in an official depository under the exclusive care and custody of the U.S. Postal Service within the New York State.



KASHIRAH LIVINGSTONE

Sworn to before me this
Day of October 31, 2007



NOTARY PUBLIC
JAMES P. KRAUZLIS
Notary Public, State of New York
No. 02KR5051531
Qualified in Suffolk County
Commission Expires Nov. 6, 2008
11/11/2008